

# Officer-Involved Shootings and Deaths

## 305.1 PURPOSE AND SCOPE

The purpose of this policy is to establish procedures for the investigation of an incident in which a person is injured or dies as the result of an officer-involved shooting or dies as a result of other action of an officer.

In other incidents not covered by this policy, the Chief of Police may decide the investigation will follow the process provided in this policy.

## 305.2 POLICY

The policy of the Fargo Police Department is to ensure that officer-involved shootings or other critical incidents resulting in death or serious bodily injury of another person are investigated in a thorough, fair and impartial manner.

## 305.3 TYPES OF INVESTIGATIONS

Officer-involved shootings and deaths involve several separate investigations. The investigations may include:

- A criminal investigation of the suspect's actions.
- A criminal investigation of the involved officer's actions.
- An administrative investigation as to policy compliance by involved officers.
- A civil investigation to determine potential liability.

## 305.4 CONTROL OF INVESTIGATIONS

Investigators from surrounding agencies may be assigned to work on the criminal investigation of officer-involved shootings and deaths. This may include at least one investigator from the agency that employs the involved officer.

Jurisdiction is determined by the location of the shooting or death and the agency employing the involved officer. The following scenarios outline the jurisdictional responsibilities for investigating officer-involved shootings and deaths.

### 305.4.1 CRIMINAL INVESTIGATION OF SUSPECT ACTIONS

The investigation of any possible criminal conduct by the suspect is controlled by the agency in whose jurisdiction the suspect's crime occurred. For example, the Fargo Police Department would control the investigation if the suspect's crime occurred in Fargo.

If multiple crimes have been committed in multiple jurisdictions, identification of the agency that will control the investigation may be reached in the same way as with any other crime. The investigation may be conducted by the agency in control of the criminal investigation of the involved officer, at the discretion of the Chief of Police and with concurrence from the other agency.

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### **305.4.2 CRIMINAL INVESTIGATION OF OFFICER ACTIONS**

The control of the criminal investigation into the involved officer's conduct during the incident will be determined by the employing agency's protocol. When an officer from this department is involved, the criminal investigation will be handled according to the Criminal Investigation section of this policy.

Requests made of this department to investigate a shooting or death involving an outside agency's officer shall be referred to the Chief of Police or the authorized designee for approval.

### **305.4.3 ADMINISTRATIVE INVESTIGATION**

Regardless of where the incident occurs, the administrative investigation of each involved officer is controlled by the respective employing agency.

## **305.5 INVESTIGATION PROCESS**

The following procedures are guidelines used in the investigation of an officer-involved shooting or death.

### **305.5.1 UNINVOLVED OFFICER RESPONSIBILITIES**

Upon arrival at the scene of an officer-involved shooting or death, the first uninvolved FPD officer will assume the responsibilities of a supervisor until properly relieved. This officer should, as appropriate:

- (a) Secure the scene and identify and eliminate hazards for all those involved.
- (b) Take reasonable steps to obtain emergency medical attention for injured individuals.
- (c) Request additional resources from the department or other agencies.
- (d) Coordinate a perimeter or pursuit of suspects.
- (e) Check for injured persons and evacuate as needed.
- (f) Brief the supervisor upon arrival.

### **305.5.2 SUPERVISOR RESPONSIBILITIES**

Upon arrival at the scene, the first uninvolved FPD supervisor should ensure completion of the duties as outlined above, plus:

- (a) Attempt to obtain a brief overview of the situation from any uninvolved officers.
  - 1. In the event there are no uninvolved officers who can supply adequate overview, the supervisor should attempt to obtain a brief voluntary overview from one involved officer.
- (b) If necessary, the supervisor may administratively order any FPD officer to immediately provide public safety information necessary to secure the scene, identify injured parties and pursue suspects.
  - 1. Public safety information shall be limited to such things as outstanding suspect information, number and direction of any shots fired, perimeter of the incident scene, identity of known or potential witnesses and any other pertinent information.

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2. The initial on-scene supervisor should not attempt to order any involved officer to provide any information other than public safety information.
- (c) Provide all available information to the District Commander and Dispatch. If feasible, sensitive information should be communicated over secure networks.
- (d) Take command of and secure the incident scene with additional officers until properly relieved by another supervisor or other assigned personnel or investigator.
- (e) As soon as practicable, ensure involved officers are transported (separately, if feasible) to a suitable location for further direction.
  1. Each involved FPD officer should be given an administrative order not to discuss the incident with other involved officers or FPD members pending further direction from a supervisor.
  2. When an involved officer's weapon is taken or left at the scene for other than officer-safety reasons (e.g., evidence), ensure that he/she is provided with a comparable replacement weapon or transported by other officers.

### 305.5.3 DISTRICT COMMANDER RESPONSIBILITIES

Upon learning of an officer-involved shooting or death, the Field Services District Commander shall be responsible for coordinating all aspects of the incident until he/she is relieved by the Chief of Police or a Division Commander.

All outside inquiries about the incident shall be directed to the District Commander or Public Information Officer.

### 305.5.4 NOTIFICATIONS

The following persons shall be notified as soon as practicable:

- Chief of Police
- Investigation Division Commander
- Field Services Division Commander
- Outside agency investigators (if appropriate)
- The Office of Professional Standards
- Psychological/peer support personnel
- Chaplain
- Coroner (if necessary)
- Public Information Officer

### 305.5.5 INVOLVED OFFICERS

The following shall be considered for the involved officer:

- (a) Any request for legal representation will be accommodated.

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1. Involved FPD officers shall not be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report. FPD officers will be permitted to meet individually with legal representatives.
2. Requests from involved non-FPD officers should be referred to their employing agency.
- (b) Discussions with licensed attorneys will be considered privileged as attorney-client communications.
- (c) A licensed psychotherapist shall be provided by the department to each involved FPD officer. A licensed psychotherapist may also be provided to any other affected FPD members, upon request.
  1. Interviews with a licensed psychotherapist will be considered privileged.
  2. An interview or session with a licensed psychotherapist may take place prior to the member providing a formal interview or report. However, in order to maintain the integrity of each involved officer's statement, involved officers shall not be permitted to collaboratively consult, meet collectively, or in a group with a licensed psychotherapist prior to providing a formal interview or report.
  3. A separate fitness-for-duty exam may also be required (see the Fitness for Duty Policy).

Although the department will honor the sensitivity of communications with peer counselors, there is no legal privilege to such communications. Peer counselors are cautioned against discussing the facts of any incident with an involved or witness officer.

Care should be taken to preserve the integrity of any physical evidence present on the involved officer's equipment or clothing, such as blood or fingerprints, until investigators or lab personnel can properly retrieve it.

Each involved FPD officer shall be given reasonable paid administrative leave following an officer-involved shooting or death. It shall be the responsibility of the District Commander to make schedule adjustments to accommodate such leave.

#### **305.6 CRIMINAL INVESTIGATION**

The designated investigating agency is responsible for the criminal investigation into the circumstances of any officer-involved shooting or death.

If available, investigative personnel from this department may be assigned to partner with investigators from outside agencies to avoid duplicating efforts in related criminal investigations.

Once public safety issues have been addressed, criminal investigators should be given the opportunity to obtain a voluntary statement from involved officers and to complete their interviews. The following shall be considered for the involved officer:

- (a) FPD supervisors and Office of Professional Standards personnel should not participate directly in any voluntary interview of FPD officers. This will not prohibit such

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personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.

- (b) If requested, any involved officer will be afforded the opportunity to consult individually with an attorney prior to speaking with criminal investigators. However, in order to maintain the integrity of each involved officer's statement, involved officers shall not consult or meet with an attorney collectively or in groups prior to being interviewed.
- (c) If any involved officer is physically, emotionally or otherwise not in a position to provide a voluntary statement when interviewed by criminal investigators, consideration should be given to allowing a reasonable period for the officer to schedule an alternate time for the interview.
- (d) Any voluntary statement provided by an involved officer will be made available for inclusion in any related investigation, including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators unless the officer consents.

### 305.6.1 REPORTS BY INVOLVED FPD OFFICERS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this department shall retain the authority to require involved FPD officers to provide sufficient information for related criminal reports to facilitate the apprehension and prosecution of those individuals.

While the involved FPD officer may write the report, it is generally recommended that such reports be completed by assigned investigators, who should interview all involved officers as victims/witnesses. Since the purpose of these reports will be to facilitate criminal prosecution, statements of involved officers should focus on evidence to establish the elements of criminal activities by suspects. Care should be taken not to duplicate information provided by involved officers in other reports.

Nothing in this section shall be construed to deprive an involved FPD officer of the right to consult with legal counsel prior to completing any such criminal report.

Reports related to the prosecution of criminal suspects will be processed according to normal procedures but should also be included for reference in the investigation of the officer-involved shooting or death.

### 305.6.2 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an officer-involved shooting or death may become unavailable or the integrity of their statements compromised with the passage of time, a supervisor should take reasonable steps to promptly coordinate with criminal investigators to utilize available law enforcement personnel for the following:

- (a) Identification of all persons present at the scene and in the immediate area.
  - 1. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.

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2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, attempts to identify the witness prior to his/her departure should be made whenever feasible.
- (b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by a member of the department.
  1. A written, verbal, or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
- (c) Promptly contacting the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to the incident.

#### **305.6.3 INVESTIGATIVE PERSONNEL**

Once notified of an officer-involved shooting or death, it shall be the responsibility of the designated Investigation Division supervisor to assign appropriate investigative personnel to handle the investigation of related crimes. Department investigators will be assigned to work with investigators from the investigating agency and may be assigned to separately handle the investigation of any related crimes not being investigated by the investigating agency.

All related department reports, except administrative and/or privileged reports, will be forwarded to the designated Investigation Division supervisor for approval. Privileged reports shall be maintained exclusively by members who are authorized such access. Administrative reports will be forwarded to the appropriate Division Commander.

#### **305.7 ADMINISTRATIVE INVESTIGATION**

In addition to all other investigations associated with an officer-involved shooting or death, this department will conduct an internal administrative investigation of involved FPD officers to determine conformance with department policy. This investigation will be conducted under the supervision of the Office of Professional Standards.

Interviews of officers shall be subject to department policies and applicable laws.

- (a) Any officer involved in a shooting or death may be requested or administratively compelled to provide a blood sample for alcohol/drug screening. Absent consent from the officer, such compelled samples and the results of any such testing shall not be disclosed to any criminal investigative agency.
- (b) If any officer has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved officer.

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- (c) In the event that an involved officer has elected not to provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
  - 1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the officer's physical and psychological needs have been addressed before commencing the interview.
  - 2. If requested, the officer shall have the opportunity to select an uninvolved representative to be present during the interview. However, in order to maintain the integrity of each individual officer's statement, involved officers shall not consult or meet with a representative collectively or in groups prior to being interviewed.
  - 3. Administrative interviews should be recorded by the investigator. The officer may also record the interview.
  - 4. The officer shall be informed of the nature of the investigation. If an officer refuses to answer questions, he/she should be given his/her Garrity rights and ordered to provide full and truthful answers to all questions. The officer shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally.
  - 5. The Office of Professional Standards shall compile all relevant information and reports necessary for the department to determine compliance with applicable policies.
  - 6. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

#### **305.8 AUDIO AND VIDEO RECORDINGS**

Any officer involved in a shooting or death may be permitted to review available Mobile Audio/Video (MAV), body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports.

Upon request, non-law enforcement witnesses who are able to verify their presence and their ability to contemporaneously perceive events at the scene of an incident may also be permitted to review available MAV, body-worn video, or other video or audio recordings with the approval of assigned investigators or a supervisor.

Any MAV, body-worn and other known video, or audio recordings of an incident should not be publicly released during an ongoing investigation without consulting the prosecuting attorney or City Attorney's Office, as appropriate.

#### **305.9 DEBRIEFING**

Following an officer-involved shooting or death, the Fargo Police Department should conduct both a critical incident/stress debriefing and a tactical debriefing.

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### **305.9.1 CRITICAL INCIDENT/STRESS DEBRIEFING**

A critical incident/stress debriefing should occur as soon as practicable. The Peer Assistance Crisis Team supervisor is responsible for organizing the debriefing. Notes and recorded statements should not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a traumatic event.

The debriefing is not part of any investigative process. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law or a valid court order (N.D.C.C. § 44-04-18.1(5)).

Attendance at the debriefing shall only include those members of the department directly involved in the incident, which can include support personnel (e.g., dispatchers, other non-sworn). Family or other support personnel may attend with the concurrence of those involved in the incident. The debriefing shall be closed to the public and should be closed to all other members of the department, including supervisory and Office of Professional Standards personnel.

### **305.9.2 TACTICAL DEBRIEFING**

A tactical debriefing should take place to identify any training or areas of policy that need improvement. The Chief of Police should identify the appropriate participants. This debriefing should not be conducted until all involved members have provided recorded or formal statements to criminal and/or administrative investigators.

## **305.10 FITNESS FOR DUTY EVALUATIONS AND OTHER POST INCIDENT REQUIREMENTS**

An officer or civilian employee directly involved in an officer involved shooting or other critical incident shall be required to meet with a professionally licensed psychologist or other mental health professional (of the officer's or employee's own choosing) within 72-hours of the incident, or as soon thereafter as possible.

- (a) The scope and content of the meeting with the mental health professional shall remain privileged and confidential between the officer and the mental health professional.
- (b) The member shall as soon as practical, provide the Chief of Police with written documentation which demonstrates and/or certifies their compliance with this requirement.
- (c) The department will not incur the expenses associated with any travel, lodging, per diem, etc., for the member or the mental health professional relative to the requirements unless authorized by the Chief of Police

Prior to returning to or being placed in a regular or temporary work assignment, an officer or civilian employee directly involved in an officer involved shooting or other critical incident shall be required to submit to a physical and/or fitness for duty evaluation conducted by a department designated physician and or mental health professional.

- (a) The member shall be required to follow the recommendations received from the duly designated physician and/or mental health professional, including any recommendations for additional care and/or evaluation.



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- (b) The scope and content of the initial or any subsequent fitness for duty evaluation as required in the section shall be made available to the Chief of Police.
- (c) The fitness for duty evaluation will be maintained the member's medical file.

The Chief of Police shall be responsible for making any final determinations regarding the member's return to full or temporary duty.

In addition, the member involved in an officer involved shooting or other critical incident shall also be required to meet with a licensed psychologist or other mental health professional (of the member's own choosing) approximately three (3) months following the incident and again approximately six (6) months following the incident.

- (a) The scope and content of the these required meetings shall remain privileged and confidential between the member and the mental health professional.
- (b) The member shall as soon as practical, provide the Chief of Police with written documentation which and/or certifies their compliance with this requirement.
- (c) As deemed reasonable by the Chief of Police, the expenses associated with the required fitness for duty evaluation for the member, as well as the required meetings with a mental health professional shall be incurred by the department.
- (d) The department will not incur the expenses associated with any travel, lodging, per diem, etc., for the member or the mental health professional relative to the requirements unless authorized by the Chief of Police.

Prior to returning to their regular work assignment, the member involved in an officer involved shooting or other critical incident must receive written authorization to return to that assignment from the Chief of Police. The member will also be required to do the following (if applicable):

- (a) Re-qualify and/or re-certify with any firearm and/or defensive device, equipment, etc., utilized during the incident which requires qualification and/or certification.
- (b) Accompany a designated on-duty officer or civilian employee, of the members choosing, for the first five (5) work days after returning to their regular work schedule.
- (c) Meet with the command officer responsible for their work immediately following the completion of the first five (5) work days after returning to their regular work assignment for the purpose of ensuring the member is prepared and capable of working independently.

Following the completion of all of the requirements described within this section, the command officer responsible for the member involved in an officer involved shooting or other critical incident shall provide the Chief of Police with a written recommendation as to the member's ability to remain in their regular work assignment.

The Chief of Police will make any final determinations relative to the member's work status.

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#### **305.11 MEDIA RELATIONS**

Any media release shall be prepared with input and concurrence from the supervisor and department representative responsible for each phase of the investigation. Releases will be available to the Public Information Officer in the event of inquiries from the media.

No involved FPD officer shall make any comment to the media unless he/she is authorized by the Chief of Police or a Division Commander.

Department members receiving inquiries regarding officer-involved shootings or deaths occurring in other jurisdictions shall refrain from public comment and will direct those inquiries to the agency having jurisdiction and primary responsibility for the investigation.